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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE

BY \_\_\_\_\_

1 JON D. MEER (State Bar No. 144389)  
2 E-mail: jmeer@seyfarth.com  
3 **SEYFARTH SHAW LLP**  
4 2029 Century Park East, Suite 3500  
5 Los Angeles, California 90067-3021  
6 Telephone: (310) 277-7200  
7 Facsimile: (310) 201-5219

8 DENNIS S. HYUN (State Bar No. 224240)  
9 E-mail: dhyun@seyfarth.com  
10 **SEYFARTH SHAW LLP**  
11 333 South Hope Street, Suite 3900  
12 Los Angeles, California 90071  
13 Telephone: (213) 270-9600  
14 Facsimile: (213) 270-9601

15 Attorneys for Defendants  
16 BEST BUY STORES, L.P. (erroneously sued as "BEST BUY, INC.")  
17 and BRUCE WILLIAMSON  
18

19 **UNITED STATES DISTRICT COURT**

20 **CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

21 DIANA MUNOZ, an individual,

Case No.

22 Plaintiff,

23 v.

24 BEST BUY, INC., a corporation;  
25 SANDY WADE, an individual; BRUCE  
26 WILLIAMSON, an individual; and  
27 DOES 1 through 50, inclusive,  
28

Defendants.

**DEFENDANTS' NOTICE OF  
REMOVAL OF CIVIL ACTION  
TO UNITED STATES DISTRICT  
COURT PURSUANT TO  
DIVERSITY OF CITIZENSHIP  
JURISDICTION [28 U.S.C.  
SECTIONS 1332 AND 1441]**

[San Bernardino County Superior  
Court Case No. CIVRS1106094]

Complaint Filed: June 28, 2011  
Trial Date: Not Set  
Discovery Cutoff: Not Set  
Motion Cutoff: Not Set

**TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL  
DISTRICT OF CALIFORNIA, EASTERN DIVISION (RIVERSIDE) AND  
TO PLAINTIFF DIANA MUNOZ AND HER ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Defendants Best Buy Stores, L.P. (“Best Buy”) (erroneously sued as “Best Buy, Inc.”) and Bruce Williamson (“Williamson”) (collectively, “Defendants”) hereby file this Notice of Removal pursuant to 28 U.S.C. Sections 1332 and 1441(a) and (b), based on diversity of citizenship jurisdiction, in order to effectuate the removal of the above-captioned action from the Superior Court of the State of California, County of San Bernardino, to the United States District Court for the Central District of California, Eastern Division (Riverside), and states that removal is proper for the following reasons:

**I. BACKGROUND**

1. On June 28, 2011, the unverified Complaint (the “Complaint”) was filed on behalf of Plaintiff Diana Munoz (“Plaintiff”) in the Superior Court of the State of California, County of San Bernardino, entitled, “*DIANA MUNOZ v. BEST BUY, INC.; SANDY WADE; BRUCE WILLIAMSON; and DOES 1 through 50, inclusive*,” designated Case No. CIVRS1106094 (the “State Court Action”). The Complaint alleges seven causes of action for: (1) “Disability Discrimination”; (2) “Failure to Accommodate Disability”; (3) “Harassment on the Basis of Disability”; (4) “Failure to Prevent Discrimination and Harassment on the Basis of Disability”; (5) “Retaliation in Violation of the FEHA”; (6) “Retaliation in Violation of Public Policy”; and (7) “Wrongful Termination in Violation of Public Policy.” True and correct copies of the: Summons; Complaint; Civil Case Cover Sheet; Certificate of Assignment; Notice of Case Management Conference and Order to Show Cause; ADR Package; Contracted Mediation Service Providers; and Accommodations for Persons with Disabilities Using Court Facilities are

1 collectively attached as Exhibit "A" to the Declaration of Dennis S. Hyun ("Hyun  
2 Decl."), filed herewith.

3 2. On July 6, 2011, Williamson was served with the: Summons;  
4 Complaint; Civil Case Cover Sheet; Certificate of Assignment; Notice of Case  
5 Management Conference and Order to Show Cause; ADR Package; Contracted  
6 Mediation Service Providers; and Accommodations for Persons with Disabilities  
7 Using Court Facilities, true and correct copies of which are collectively attached as  
8 Exhibit "B" to the Hyun Decl.

9 3. On July 26, 2011, Defendants filed their Answer to the unverified  
10 Complaint, a true and correct copy of which is attached as Exhibit "C" to the Hyun  
11 Decl.

## 12 **II. TIMELINESS OF REMOVAL**

13 4. This Notice of Removal is timely because it is being filed within thirty  
14 (30) days of Best Buy's receipt of the Summons and Complaint on July 1, 2011,  
15 and within one (1) year of the commencement of this action. 28 U.S.C. § 1446(b).  
16 Although Williamson was served on July 6, 2011, and, therefore, has thirty (30)  
17 days to remove from the date he was served, as set forth below, he nevertheless  
18 joins in this timely Notice of Removal. *See, e.g., Delfino v. Reiswig*, 630 F.3d 952,  
19 956 (9th Cir. 2011) ("each defendant is entitled to thirty days to exercise his  
20 removal rights after being served").

## 21 **III. PROCEEDINGS IN STATE COURT**

22 5. The Superior Court has scheduled an Order to Show Cause Why the  
23 Case Should Not Be Dismissed for Failure to Serve the Summons and Complaint  
24 for 8:30 a.m. on September 26, 2011, and a Case Management Conference for 8:30  
25 a.m. on December 2, 2011. Other than the Order to Show Cause and the Case  
26 Management Conference, there are no other proceedings scheduled in the Superior  
27 Court. Exhibits "A" through "C" attached to the Hyun Decl. constitute all of the  
28

1 pleadings that have been served on and/or filed by Defendants prior to the filing of  
2 this Notice of Removal. Hyun Decl., ¶ 6.

3 **IV. DIVERSITY OF CITIZENSHIP JURISDICTION**

4 6. The Complaint, and each alleged cause of action contained therein,  
5 may be properly removed on the basis of diversity of citizenship jurisdiction, in  
6 that it is a civil action between citizens of different states and the matter in  
7 controversy exceeds the sum of \$75,000, exclusive of interest and costs. 28 U.S.C.  
8 §§ 1332(a)(1), 1441(a).

9 **A. Plaintiff Is A Citizen Of California**

10 7. For diversity purposes, a person is a “citizen” of the state in which he  
11 or she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th  
12 Cir. 1983). A party’s residence is *prima facie* evidence of her domicile. *State*  
13 *Farm Mut. Auto Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Plaintiff’s  
14 own allegations in the Complaint establish that she is a California citizen.  
15 Specifically, Plaintiff alleges that “at all times mentioned in [the] Complaint, [she]  
16 resided in the County of Riverside, California.” Complaint, ¶ 1. Plaintiff further  
17 alleges that she worked for Best Buy at its Geek Squad Service Center located at  
18 14395 Pipeline Avenue, Chino, California. *Id.*, ¶¶ 2, 5, 13. Plaintiff further alleges  
19 that she worked at this Service Center from October 19, 2009 through the date of  
20 her separation of employment, July 8, 2010. *Id.*, ¶ 32. As such, Plaintiff resided  
21 and, therefore, was domiciled in California from the date of her hiring through the  
22 date of her alleged separation, and all the way through the filing of this Complaint.  
23 Accordingly, Plaintiff is and, at all relevant times, was a citizen and resident of the  
24 State of California.

25 **B. Best Buy Is Not A Citizen Of California**

26 8. Best Buy is now and, was at the time of the filing of this action, a  
27 citizen of a State other than California within the meaning of 28 U.S.C. Section  
28

1 1332(c)(1). For diversity purposes, “[a] limited partnership or a corporation is a  
 2 citizen of (1) the state under whose laws it is organized or incorporated; and (2) the  
 3 state of its ‘principal place of business.’” *Davis v. HSBC Bank Nevada, N.A.*, 557  
 4 F.3d 1026, 1028 (9th Cir. 2009) (citing 28 U.S.C. 1332(c)(1)).

5 9. In *Davis*, 557 F.3d at 1028-1029, the Ninth Circuit expressly held that  
 6 Best Buy is not a citizen of the State of California. In *Davis*, 557 F.3d at 1027, the  
 7 plaintiff filed a class action in state court against Best Buy and other defendants for  
 8 alleged unfair business practices. *Id.* The defendants removed the lawsuit to  
 9 federal court pursuant to the Class Action Fairness Act of 2005, which grants  
 10 federal courts original jurisdiction over class actions if they meet certain  
 11 requirements, including that “any member of a class of plaintiffs is a citizen of a  
 12 State different from any defendant.” *Id.* The only issue before the Ninth Circuit  
 13 was “whether Best Buy Stores has its principal place of business in California”  
 14 and, therefore, qualifies as a citizen of California. *Id.* at 1027. Because Best Buy  
 15 was a “nationwide retailer” with “operations spread across many states,” the Ninth  
 16 Circuit applied the “nerve center” test and held that Best Buy was not a citizen of  
 17 the State of California. *Id.* at 1028.

18 10. More recently, the United States Supreme Court in *The Hertz Corp. v.*  
 19 *Friend*, 559 U.S. \_\_\_, 130 S. Ct. 1181, 1192 (2010), held that a corporate entity’s  
 20 “principal place of business” for determining its citizenship is its “nerve center”:

21 We conclude that “principal place of business” is best  
 22 read as referring to the place where a corporation’s  
 23 officers direct, control, and coordinate the corporation’s  
 24 activities. It is the place that Courts of Appeals have  
 25 called the corporation’s “nerve center.” **And in practice  
 it should normally be the place where the corporation  
 maintains its headquarters -- provided that the  
 headquarters is the actual center of direction, control,  
 and coordination, i.e., the “nerve center” ....**

26 *Id.* at 1192 (emphasis added).

27 11. Best Buy is now, and ever since this action commenced has been, a  
 28 Limited Partnership organized and existing under the laws of the State of Virginia,



1 with its principal place of business in the State of Minnesota. *See* Declaration of  
2 Suzan Denise McGinnis (“McGinnis Decl.”), ¶¶ 2-5.

3 12. Pursuant to *Davis*, 557 F.3d at 1028 and *The Hertz Corp.*, 130 S. Ct.  
4 at 1192, Best Buy’s principal place of business is Minnesota because its “nerve  
5 center” is located in the State of Minnesota. Specifically, Best Buy’s headquarters  
6 are located in the State of Minnesota and the majority of its executive and  
7 administrative functions take place in Minnesota. McGinnis Decl., ¶¶ 4-5. Best  
8 Buy’s high-level management team is based in Minnesota and conducts Best Buy’s  
9 business from the Minnesota headquarters. *Id.* Further, the majority of Best Buy’s  
10 domestic administrative functions, including payroll, accounting, purchasing,  
11 marketing, and information systems are located in Minnesota. *Id.*, ¶ 5. Therefore,  
12 Best Buy is a citizen of the State of Minnesota pursuant to the “nerve center” test  
13 and the State of Virginia pursuant to its organization.

14 13. Even if this Court were to consider the citizenship of Best Buy’s  
15 general and limited partners, Best Buy is still not a citizen of California because its  
16 partners are not citizens of the State of California. *See, e.g., Grupo Dataflux v.*  
17 *Atlas Global Group, L.P.*, 541 U.S. 567, 569 (2004) (“a partnership ... is a citizen  
18 of each State or foreign country of which any of its partners is a citizen”); *Johnson*  
19 *v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (same).

20 14. Best Buy’s general and limited partners are BBC Property Co. and  
21 BBC Investment Co., respectively. McGinnis Decl., ¶ 6. BBC Property Co. is a  
22 corporation incorporated in the State of Minnesota with its principal place of  
23 business located in the State of Minnesota. *Id.*, ¶ 7. The majority of BBC Property  
24 Co.’s executive and administrative functions take place in Minnesota and the  
25 greater part of its domestic administrative functions are located in Minnesota. *Id.*

26 15. BBC Investment Co. is a corporation incorporated in the State of  
27 Nevada with its principal place of business located in the State of Minnesota. *Id.*, ¶  
28 8. The majority of BBC Investment Co.’s executive and administrative functions

1 take place in Minnesota. *Id.* The greater part of BBC Investment Co.'s domestic  
2 administrative functions are located in Minnesota. *Id.*

3 16. Accordingly, neither Best Buy nor its general and limited partners are  
4 citizens of the State of California.

5 **C. Because Williamson And Wade Are Sham Defendants, Their**  
6 **Citizenship Should Be Disregarded For Determining Diversity**

7 17. As a threshold matter, Sandy Wade ("Wade") is a permanent resident  
8 of and, thus, domiciled in the State of Arizona. Declaration of Sandy Wade  
9 ("Wade Decl."), ¶ 3. Therefore, her citizenship does not destroy diversity. In any  
10 event, both Wade and Williamson are "sham" defendants.

11 18. It is well-settled that a party cannot attempt to defeat diversity of  
12 citizenship jurisdiction by adding "sham" defendants. *See, e.g., Morris v. Princess*  
13 *Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001); *Dodson v. Spillada Maritime*  
14 *Corp.*, 951 F.2d 40, 42 (5th Cir. 1992); *TPS Utilicom Serv., Inc. v. AT & T Corp.*,  
15 223 F. Supp. 2d 1089, 1100-1101 (C.D. Cal. 2002) (same).

16 19. Joinder of a defendant is fraudulent if the defendant cannot be liable  
17 to the plaintiff on any theory alleged in the complaint. *See, e.g., Ritchey v. Upjohn*  
18 *Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998); *McCabe v. General Foods Corp.*,  
19 811 F.2d 1336, 1339 (9th Cir. 1987).

20 20. If the facts reveal that joinder is fraudulent, the defendant may be  
21 dismissed from the action pursuant to Rule 21 of the Federal Rules of Civil  
22 Procedure, which provides that "[p]arties may be dropped or added by order of the  
23 court on motion of any party ... at any stage of the action and on such terms as are  
24 just." *Gasnik v. State Farm Ins. Co.*, 825 F. Supp. 245, 248-249 (E.D. Cal. 1992).

25 21. In hopes of evading diversity of citizenship jurisdiction, Plaintiff has  
26 asserted claims against individual defendants Williamson and Wade for:  
27 "Disability Discrimination"; "Retaliation in Violation of [the California Fair  
28

1 Employment and Housing Act or the FEHA]”; and “Retaliation in Violation of  
2 Public Policy.” However, neither Williamson nor Wade are liable for any of the  
3 claims alleged against them in the Complaint, as a matter of law.

4 22. California courts have repeatedly held that individual employees, such  
5 as Wade and Williamson, cannot be sued for alleged discrimination under the  
6 FEHA. *See, e.g., Jones v. Lodge at Torrey Pines P’ship*, 42 Cal. 4th 1158, 1164  
7 (2008) (“the FEHA does not make individuals personally liable for  
8 discrimination”); *Leek v. Cooper*, 194 Cal. App. 4th 399, 408 (2011) (“only the  
9 employer, not individual supervisory employees, may be held personally liable  
10 under FEHA for discriminatory hiring, firing, and personnel practices”); *Reno v.*  
11 *Baird*, 18 Cal. 4th 640, 663 (1998) (“individuals who do not themselves qualify as  
12 employers may not be sued under the FEHA for alleged discriminatory acts”);  
13 *Janken v. GM Hughes Electr.*, 46 Cal. App. 4th 55, 67-71 (1996) (“[s]ince we have  
14 concluded that only employers -- and not individual supervisory employees -- are  
15 at risk of liability for discrimination, and since only discrimination is alleged here,  
16 the trial court was correct in dismissing the individual supervisory employees”).  
17 As such, Plaintiff’s claim for “Disability Discrimination” alleged against Wade and  
18 Williamson must fail.

19 23. California courts have also rejected claims for retaliation against  
20 individual employees based on the same rationale. *See, e.g., Jones*, 42 Cal. 4th at  
21 1173 (“[a]ll of these reasons for not imposing individual liability for discrimination  
22 ... apply equally to retaliation”; “the employer is liable for retaliation under [the  
23 FEHA], but nonemployer individuals are not personally liable for their role in that  
24 retaliation”); *Grobesson v. City of Los Angeles*, 190 Cal. App. 4th 778, 812-813  
25 (2010) (affirming dismissal of the plaintiff’s retaliation claim alleged against  
26 former supervisor; noting that it is “clear and strong that individual liability cannot  
27 be imposed under FEHA”).  
28



1           24. It is also well-established that a plaintiff cannot circumvent  
2 California's bar against individual liability for discrimination and retaliation by  
3 recasting these claims as an alleged "violation of public policy." *See, e.g., Reno*,  
4 18 Cal. 4th at 664 ("it would be absurd to forbid a plaintiff to sue a supervisor  
5 under the FEHA, then allow essentially the same action under a different rubric.  
6 Because plaintiff may not sue ... an individual supervisor under the FEHA, she  
7 may not sue her individually for wrongful discharge in violation of public policy");  
8 *Le Bourgeois v. Fireplace Manufacturers, Inc.*, 68 Cal. App. 4th 1049, 1052  
9 (1998) ("persons cannot be sued as individuals for wrongful discharge in violation  
10 of fundamental public policy where the basis for the cause of action is alleged  
11 discrimination under California's Fair Employment and Housing Act"); *Sheppard*  
12 *v. Freeman*, 67 Cal. App. 4th 339, 345-346 (1998) ("individual supervisory  
13 employees cannot be personally liable under the Fair Employment and Housing  
14 Act ... or for discharge in violation of public policy for discrimination relating to  
15 personnel management decisions").

16           25. Accordingly, Plaintiff's claims for discrimination, retaliation, and  
17 violation of public policy are not legally viable against Wade and Williamson and,  
18 therefore, their citizenship should be disregarded as to these claims.

19           26. Equally without merit is Plaintiff's claim for harassment against Wade  
20 and Williamson. To qualify as actionable harassment, the conduct alleged by  
21 Plaintiff "must be extreme enough to amount to a change in terms or conditions of  
22 employment." *See, e.g., Aguilar v. Avis Rent A Car Sys., Inc.*, 21 Cal. 4th 121, 130  
23 (1999); *Etter v. Veriflo Corp.*, 67 Cal. App. 4th 457, 463 (1997).

24           27. As explained by the California Court of Appeal in *Janken v. GM*  
25 *Hughes Electr.*, 46 Cal. App. 4th 55, 64-65 (1996), harassment under the FEHA  
26 requires more than simple management decisions:  
27  
28

[C]ommonly necessary personnel management actions such as hiring and firing, **job or project assignments**, office or work station assignments, promotion or demotion, performance evaluations, the provision of support, the assignment or nonassignment of supervisory functions, deciding who will and who will not attend meetings, deciding who will be laid off, and the like, **do not come within the meaning of harassment.**

*Id.* (holding that the plaintiff's complaint was properly dismissed because the plaintiff failed to allege any harassing behavior; emphasis added).

28. Plaintiff alleges that she was harassed on account of her purported disabilities. Complaint, ¶¶ 50-51. However, none of the conduct alleged even comes close to actionable harassment. Plaintiff's allegations are limited to Wade and Williamson purportedly not complying with Plaintiff's medical restrictions, requiring "Plaintiff to complete certain assignments on a daily basis," and then informing Plaintiff that her employment was being terminated for unexcused absences. *Id.*, ¶¶ 18-21, 32. These are precisely the types of allegations that the Court of Appeal in *Janken* held do not amount to actionable harassment because Plaintiff has alleged routine personnel-related conduct, such as assignment of job duties and informing Plaintiff of her termination. As such, it is undisputed that Wade and Williamson are "sham" defendants such that their citizenship should be disregarded for determining diversity of citizenship jurisdiction.

#### **D. Amount In Controversy**

29. While Defendants deny any liability as to Plaintiff's claims, the amount in controversy requirement is satisfied because "it is more likely than not" that the amount exceeds the jurisdictional minimum of \$75,000. *See Sanchez v. Monumental Life Ins.*, 95 F.3d 856, 862 (9th Cir. 1996) ("defendant must provide evidence establishing that it is 'more likely than not' that the amount in controversy exceeds [the threshold] amount"). As explained by the Ninth Circuit, "the amount-in-controversy inquiry in the removal context is not confined to the

1 face of the complaint.” *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir.  
2 2004) (finding that the Court may consider facts presented in the removal petition).

3 30. In determining whether a Complaint meets the \$75,000 threshold of  
4 28 U.S.C. Section 1332(a), a court may consider the aggregate value of claims for  
5 compensatory and punitive damages, as well as attorneys’ fees. *See, e.g., Bell v.*  
6 *Preferred Life Ass. Soc’y*, 320 U.S. 238, 240 (1943) (“[w]here both actual and  
7 punitive damages are recoverable under a complaint each must be considered to  
8 the extent claimed in determining jurisdictional amount.”) (footnote omitted);  
9 *Goldberg v. CPC Int’l, Inc.*, 678 F.2d 1365, 1367 (9th Cir.) *cert. denied*, 459 U.S.  
10 945 (1982) (attorneys’ fees may be taken into account to determine jurisdictional  
11 amount).

12 31. Based on the nature of the allegations and the damages sought,  
13 Plaintiff has placed in controversy an amount exceeding \$75,000, exclusive of  
14 costs and interests.

15 32. Further, it is unimaginable that Plaintiff’s counsel would seek less  
16 than \$75,000 in attorneys’ fees for a jury trial of the claims alleged in the  
17 Complaint. If Plaintiff’s counsel is seeking less than \$75,000 in fees, Defendants  
18 invite him to stipulate to this fact for purposes of this case.

19 33. Plaintiff also alleges that her claimed damages “exceed[] \$25,000.00.”  
20 Complaint, ¶ 6. Plaintiff also seeks “[a]ctual damages,” “[p]ain and suffering,”  
21 “[p]unitive and exemplary damages,” and “attorney’s fees.” *Id.* at p. 10:22, 24, 25-  
22 26. Moreover, given that Plaintiff asserts a claim for wrongful termination, she  
23 will likely seek lost wages purportedly arising from her termination. Her annual  
24 compensation at the time of her termination was \$22,963.20. The Service Center  
25 in which Plaintiff worked was closed on May 6, 2011. Thus, Plaintiff’s  
26 employment would have ended in any event on May 6, 2011. Nevertheless,  
27 Plaintiff’s lost wages for the time period between her separation of employment on  
28 July 8, 2010, and the closing of the Service Center on May 6, 2011, are

1 approximately \$19,136. Plaintiff also will likely seek lost benefits as part of her  
2 damages. Thus, it is more likely than not that Plaintiff's alleged damages  
3 consisting of lost wages and benefits, pain and suffering, and attorneys' fees meet  
4 the \$75,000 jurisdictional threshold.

5 34. Further, in the unlikely event that Plaintiff should prevail at trial,  
6 numerous recent jury awards to plaintiffs in disability discrimination cases have  
7 exceeded \$75,000. *See Landau v. County of Riverside*, 2010 WL 1648442 (C.D.  
8 Cal. 2010) (award of \$1,033,500 to employee who brought action against employer  
9 based disability discrimination and failure to accommodate); *Dodd v. Haight*  
10 *Brown & Bonesteel LLP*, 2010 WL 4845808 (L.A. County Superior Ct. 2010)  
11 (award of \$410,520 to employee wrongfully terminated based on disability and  
12 medical condition); *Ybarra v. Dacor Holding Inc.*, 2010 WL 2404221 (L.A.  
13 County Superior Ct. 2010) (award of \$615,236 to employee in disability  
14 discrimination and wrongful termination action); *Malone v. Potter*, 2010 WL  
15 330252 (C.D. Cal. 2010) (award of \$300,000 to employee in disability  
16 discrimination and retaliation action); *Morales v. Los Angeles County Metro.*  
17 *Transp. Auth.*, 2008 WL 4488427 (L.A. County Superior Ct. 2008) (award of  
18 \$2,247,137 to employee terminated due to disability); *Ismen v. Beverly Hosp.*,  
19 2008 WL 4056258 (L.A. County Sup. Ct.) (award of \$1,180,164 in disability  
20 discrimination and failure to accommodate action where employee lost her position  
21 after suffering on the job injury); *Kolas v. Alticor Inc.*, 2008 WL 6040410 (L.A.  
22 County Superior Ct. 2008) (award of \$600,000 to employee claiming wrongful  
23 termination and disability and age discrimination); *Vaughn v. CNA Casualty of*  
24 *California*, 2008 WL 4056256 (C.D. Cal. 2008) (award of \$850,000 to employee  
25 in disability discrimination action); *Orue v. Sears, Roebuck & Co.*, 2007 WL  
26 2456108 (L.A. County Superior Ct. 2007) (award of \$173,056 to employee who  
27 brought action based on disability and age discrimination against employer who  
28 wrongfully terminated her); *Martin v. Arrow Elect.*, 2006 WL 2044626 (C.D. Cal.

2006) (award of \$380,306 to employee who was wrongfully terminated based upon the disabilities he developed during his employment); *Shay v. TG Const., Inc.*, 2002 WL 1918045 (Ventura County Superior Ct. 2002) (award of \$462,500 to employee wrongfully terminated on basis of disability).

## **V. ALL PARTIES HAVE JOINED IN THIS REMOVAL**

35. Williamson has joined in this Notice of Removal because he has been served with the Complaint. Wade, however, has not been served with the Summons and Complaint as of the date of this filing and, therefore, she need not join in this Notice of Removal. Wade Decl., ¶ 4; *see, e.g., Delfino*, 630 F.3d at 957 (holding that defendants who were not properly served did not need to join in notice of removal).

36. Moreover, as shown above, because Wade is a “sham” defendant, she need not join in this Notice of Removal. *See, e.g., Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n. 1 (9th Cir. 1988) (citing *Hewitt v. City of Stanton*, 798 F.2d 1230, 1233 (9th Cir. 1986); *Tri-Cities Newspapers, Inc. v. Tri-Cities P.P. & A Local 349*, 427 F.2d 325, 326-27 (5th Cir. 1970); and *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921)).

37. In any event, given that Best Buy and Williamson have joined in this Notice of Removal as the only defendants who have been served, no other parties need to join in this Removal.

## **VI. VENUE**

38. Plaintiff alleges that “venue is proper in San Bernardino County because all events and actions that gave rise to [the] Complaint occurred in the County of San Bernardino, California.” Complaint, ¶ 5. Therefore, without waiving Defendants’ right to challenge, among other things, personal jurisdiction and/or venue by way of a motion or otherwise, venue lies in the Central District, Eastern Division, of this Court pursuant to 28 U.S.C. Sections 84(c), 1441(a), and



1 1446(a). Moreover, this Court is the United States District Court for the district  
 2 within which the State Court Action is pending. Thus, venue lies in this Court  
 3 pursuant to 28 U.S.C. Section 1441(a).

4 **VII. SERVICE OF NOTICE OF REMOVAL ON PLAINTIFF AND THE**  
 5 **CLERK OF THE SUPERIOR COURT**

6 39. Pursuant to 28 U.S.C. Section 1446(d), written notice of the filing of  
 7 this Notice of Removal will be given promptly to Plaintiff and, together with a  
 8 copy of the Notice of Removal, will be filed with the Clerk of the Superior Court  
 9 of the State of California, County of San Bernardino, in the State Court Action.

10 40. This Notice of Removal will be served on counsel for Plaintiff. A  
 11 copy of the Proof of Service regarding the Notice of Removal will be filed shortly  
 12 after these papers are filed and served.

13 41. WHEREFORE, Defendants pray that the State Court Action now  
 14 pending in the Superior Court of the State of California for the County of San  
 15 Bernardino, be removed to the United States District Court for the Central District  
 16 of California, Eastern Division (Riverside), through the timely filing of this Notice  
 17 of Removal.

18  
 19 DATED: July 27, 2011

SEYFARTH SHAW LLP

20  
 21 By: 

JON D. MEER

DENNIS S. HYUN

22 Attorneys for Defendants  
 23 BEST BUY STORES, L.P. (erroneously  
 24 sued as "BEST BUY, INC.") and  
 25 BRUCE WILLIAMSON  
 26  
 27  
 28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
 3 ) ss  
 4 COUNTY OF LOS ANGELES )

5 I am a resident of the State of California, over the age of eighteen years, and  
 6 not a party to the within action. My business address is 333 S. Hope Street, Suite  
 7 3900, Los Angeles, California 90071. On **July 27, 2011**, I served the within  
 documents:

8 **DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION TO UNITED STATES**  
 9 **DISTRICT COURT PURSUANT TO DIVERSITY OF CITIZENSHIP JURISDICTION [28**  
 10 **U.S.C. SECTIONS 1332 AND 1441]**

- 11 ☐ by placing the document(s) listed above in a sealed envelope with postage  
 12 thereon fully prepaid, in the United States mail at Los Angeles, addressed  
 as set forth below.
- 13 ☒ by placing the document(s) listed above, together with an unsigned copy  
 14 of this declaration, in a sealed Federal Express envelope with postage  
 15 paid on account and deposited with Federal Express at Los Angeles,  
 16 California, addressed as set forth below.

17 **SEE ATTACHED SERVICE LIST**

18 I am readily familiar with the firm's practice of collection and processing  
 19 correspondence for mailing. Under that practice it would be deposited with the  
 20 U.S. Postal Service on that same day with postage thereon fully prepaid in the  
 21 ordinary course of business. I am aware that on motion of the party served, service  
 22 is presumed invalid if postal cancellation date or postage meter date is more than  
 one day after the date of deposit for mailing in affidavit.

23 I declare that I am employed in the office of a member of the bar of this  
 24 court whose direction the service was made.

25 Executed on **July 27, 2011**, at Los Angeles, California.

26   
 27 \_\_\_\_\_  
 28 Lisa Dancel

**SERVICE LIST**

Dane Miller  
Matthew Wallin  
YOUNG MILLER LLP  
8000 Painter Ave., Suite 101  
Whittier, CA 90602  
Tel: 562.360.1192  
Fax: 562.360.1198

*Attorneys for Plaintiff Diana Munoz*

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Virginia A. Phillips and the assigned discovery Magistrate Judge is Oswald Parada.

The case number on all documents filed with the Court should read as follows:

**EDCV11- 1182 VAP (OPx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :  
**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☐ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☒ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) Diana Munoz	<b>DEFENDANTS</b> Best Buy Stores, L.P. (erroneously sued as "Best Buy, Inc.") and Bruce Williamson
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Dane Miller (State Bar No. 226332) Young Miller, LLP 8000 Painter Avenue, Suite 101 Whittier, California 90602 Tel: (562) 360-1192; Fax: (562) 360-1198	Attorneys (If Known) JON D. MEER (State Bar No. 144389) <b>SEYFARTH SHAW LLP</b> 2029 Century Park East, Suite 3500 Los Angeles, California 90067 Tel: (310) 277-7200; Fax: (310) 201-5219

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.)  <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

**IV. ORIGIN** (Place an X in one box only.)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
--	--	--	---	---	--	---

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23: ☐ Yes ☒ No      **MONEY DEMANDED IN COMPLAINT:** \$ In excess of \$75,000.

**VI. CAUSE OF ACTION** (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 Diversity of citizenship jurisdiction pursuant to 28 U.S.C. Sections 1332 and 1441.

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<b>BANKRUPTCY</b>	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE/PENALTY</b>	<b>PROPERTY RIGHTS</b>
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input checked="" type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA(1395ff)
<input type="checkbox"/> 891 Agricultural Act	<b>REAL PROPERTY</b>	<b>IMMIGRATION</b>	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923) 405(g))
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**FOR OFFICE USE ONLY:** Case Number: **CD CV 11 - 01182 VAP (OP)**  
**AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.**



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Plaintiff resides in Riverside County.	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Defendant Best Buy Stores, L.P. is a citizen of the State of Minnesota because its principal place of business is located Minnesota and a citizen of the State of Virginia because it is organized as a Virginia limited partnership. Defendants Sandy Wade and Bruce Williamson are "sham" defendants, such that their citizenship can be disregarded.

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
San Bernardino County.	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

JON D. MEER

Date July 27, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
 3 ) ss  
 4 COUNTY OF LOS ANGELES )

5 I am a resident of the State of California, over the age of eighteen years, and  
 6 not a party to the within action. My business address is 333 S. Hope Street, Suite  
 7 3900, Los Angeles, California 90071. On **July 27, 2011**, I served the within  
 documents:

8 **UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
 9 **CIVIL COVER SHEET**

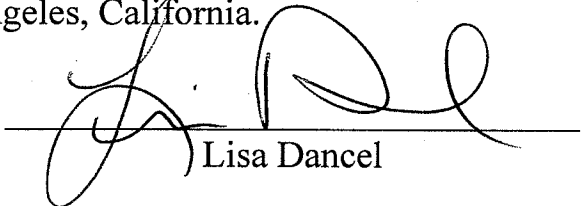
- 10 ☐ by placing the document(s) listed above in a sealed envelope with postage  
 11 thereon fully prepaid, in the United States mail at Los Angeles, addressed  
 12 as set forth below.
- 13 ☒ by placing the document(s) listed above, together with an unsigned copy  
 14 of this declaration, in a sealed Federal Express envelope with postage  
 15 paid on account and deposited with Federal Express at Los Angeles,  
 16 California, addressed as set forth below.

17 **SEE ATTACHED SERVICE LIST**

18 I am readily familiar with the firm's practice of collection and processing  
 19 correspondence for mailing. Under that practice it would be deposited with the  
 20 U.S. Postal Service on that same day with postage thereon fully prepaid in the  
 21 ordinary course of business. I am aware that on motion of the party served, service  
 is presumed invalid if postal cancellation date or postage meter date is more than  
 one day after the date of deposit for mailing in affidavit.

22 I declare that I am employed in the office of a member of the bar of this  
 23 court whose direction the service was made.

24 Executed on **July 27, 2011**, at Los Angeles, California.

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 27 Lisa Dancel  
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Matthew Wallin  
YOUNG MILLER LLP  
8000 Painter Ave., Suite 101  
Whittier, CA 90602  
Tel: 562.360.1192  
Fax: 562.360.1198

*Attorneys for Plaintiff Diana Munoz*